

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:15-cr-0038-CAB-1
Cleveland, Ohio
Plaintiff, Wednesday, March 16, 2016
10:00 a.m.
vs.

DAVID W. VICKERS,
Defendant.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE CHRISTOPHER A. BOYKO,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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United States District Court
801 West Superior Avenue
Cleveland, Ohio 44113
216-357-7092

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1 MORNING SESSION, WEDNESDAY, MARCH 16, 2016 10:00 A.M.

2 (Call to order of the Court.)

3 DEPUTY CLERK: Your Honor, the case before the
4 Court this morning is United States of America versus David
10:10:50 5 Vickers, Case Number 15-cr-38.

6 THE COURT: Thank you. Mr. Vickers, you are
7 present?

8 THE DEFENDANT: Yes.

9 MR. GREG McCORMACK: Good morning, Your Honor.

10:10:59 10 THE COURT: Mr. Greg McCormack and Mr. Jarrett
11 McCormack. Mr. Kevin Filiatraut for the government.

12 MR. FILIATRAUT: Good morning, Judge.

13 THE COURT: Miss Kim Wessel.

14 PROBATION OFFICER: Good morning.

10:11:07 15 THE COURT: We're here today for sentencing.
16 I apologize for not being here yesterday, I was bedridden, a
17 severe migraine. I apologize we had to continue this. I
18 know you had to come from afar. My apologies.

19 Mr. McCormack, Greg, would you please go to the podium
10:11:27 20 with Mr. Vickers?

21 Mr. McCormack, I will start with you. Have you had
22 sufficient time to sit down with Mr. Vickers and go over
23 this report in detail?

24 MR. GREG McCORMACK: Yes, Your Honor, we have.

10:11:50 25 THE COURT: And Mr. Vickers, I want to make

1 sure that you have had sufficient time to sit down with
2 Mr. Greg McCormack and Mr. Jarrett McCormack, go over this
3 report in detail, and have them answer all of your questions
4 to your satisfaction. Has that been done?

10:12:04 5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. McCormack, I read your
7 sentencing memorandum and, of course, the letters that you
8 sent in along with that.

9 MR. GREG McCORMACK: Yes, Your Honor.

10:12:11 10 THE COURT: So are there any objections to the
11 report itself?

12 MR. GREG McCORMACK: No, Your Honor.

13 THE COURT: And on behalf of Mr. Vickers, in
14 mitigation, please go ahead.

10:12:18 15 MR. GREG McCORMACK: Yes, Your Honor. Your
16 Honor, we will have one witness I would like to call, and
17 that would be his father, Wayne Vickers, please.

18 THE COURT: All right, we can do that. Miss
19 Wessel, would you please step down?

10:12:28 20 MR. GREG McCORMACK: May I have Mr. Vickers
21 have a seat?

22 THE COURT: Have him up here if he's going --

23 MR. GREG McCORMACK: While Mr. Vickers --

24 THE COURT: I don't know if you want him to
10:12:38 25 testify or just give a statement.

Vickers - Direct

1 MR. GREG McCORMACK: No. I'm sorry, this is
2 Mr. Vickers' father.

3 THE COURT: I understand. Do you want him to
4 testify or just give a statement?

10:12:45 5 MR. GREG McCORMACK: No. Mr. Vickers' father
6 would like to testify, if he could.

7 THE COURT: Let's have him up here.

8 MR. GREG McCORMACK: Okay. Do you want the
9 defendant to remain here or to have a seat, sir?

10:12:53 10 THE COURT: Have a seat.

11 Sir, please be sworn.

12 (The witness is sworn.)

13 THE COURT: Please have a seat. Pull that
14 microphone towards you, please.

10:13:22 15 Go ahead, Mr. McCormack.

16 DIRECT EXAMINATION OF EDGAR WAYNE VICKERS

17 BY MR. GREG McCORMACK:

18 **Q.** Sir, would you please state your full name?

19 **A.** Edgar Wayne Vickers.

10:13:27 20 **Q.** And Mr. Vickers, can you please tell us your city and
21 state of residence?

22 **A.** I live in Ashburn, Virginia.

23 **Q.** Mr. Vickers, can you please tell us, how did you find
24 out about your son David being arrested?

10:13:39 25 **A.** On January 8th, at five minutes to 6:00, I was

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1 on -- my wife passed away in September '13. January 5th I
2 left for a trip to go south to visit friends, trying to get
3 over -- get on with my life. I had gotten to Litchfield,
4 South Carolina, where my wife and I used to vacation. It
10:14:07 5 was kind of a closure. And at five minutes to 6:00 in the
6 morning I get a phone call from my daughter, and that was on
7 January the 8th. And my daughter then explained to me that
8 she had heard from David's wife that he had been arrested.

9 **Q.** All right, sir. And at that particular point did you
10:14:27 10 turn around and come back?

11 **A.** I immediately checked out of the hotel, got in my car,
12 and drove from Litchfield -- which is below Myrtle Beach --
13 home. Got into the car and started driving, and talked to
14 my daughter several times, and then called my best friend,
10:14:48 15 who is a -- Albus Kirk, who happens to be a former deputy
16 assistant director for the Secret Service, to try and get an
17 understanding of what I was facing, because this was so
18 foreign to me.

19 **Q.** All right. Mr. Vickers, you indicated your wife
10:15:05 20 passed in 2013, correct?

21 **A.** Correct.

22 **Q.** What was the cause of her passing?

23 **A.** She had early onset of Alzheimer's, a specialty called
24 posterior cortical atrophy, where the front of the brain --

10:15:17 25 **Q.** How old was she when she passed?

Vickers - Direct

1 **A.** She was 66.

2 **Q.** How would you describe your family's relationship and
3 nature of their relationship before your wife passed?

4 **A.** It was good.

10:15:30 5 It was stressed, it was in turmoil. When I say
6 turmoil, Mary was the centerpiece of the entire family, and
7 we all -- meaning my daughter, who is my eldest, and David
8 and his family and myself, we were trying to understand
9 Alzheimer's, how did it happen so quickly, what was going on
10:15:55 10 with my wife, and what we could best do to help her get
11 through this. And then of course I know both of my children
12 and their families were trying to help me struggle through
13 this.

14 **Q.** How long was she sick with Alzheimer's before she
10:16:09 15 passed?

16 **A.** She was diagnosed August -- not August -- December
17 27th, '07, and she passed on September 27, 2013.

18 **Q.** Is your daughter Kelly with you here today?

19 **A.** Yes, she is. She's sitting in the gallery.

10:16:27 20 **Q.** And can you tell me, please, how did your wife's
21 sickness and her death appear to affect your son David?

22 **A.** David became I'll say withdrawn, or to himself. He
23 would come to his mother, but when we were around him, when
24 he was within himself, I could see changes, but then I was
10:16:52 25 going through major changes myself. And I kept trying to

Vickers - Direct

1 draw him out and couldn't get any information. I would go
2 to his wife Dana and wonder if he wasn't going into a
3 depression.

4 It was just a very difficult, difficult time for me to
10:17:12 5 understand what was going on with myself, and then seeing
6 both of my children react to what was happening to their
7 mother, because it was just so unexpected.

8 **Q.** Was David especially close to his mother?

9 **A.** Yes, he was. David was very, very close. Being the
10:17:33 10 youngest, being a boy, at least with us it was
11 gravitational. I helped a lot more with Kelly, and Mary
12 helped a lot more with David in growing up.

13 **Q.** Mr. Vickers, can you tell us when and how did you find
14 out that your son David had been sexually molested as a
10:17:52 15 child?

16 **A.** I don't remember the exact date, but I can tell you
17 that it was on a snowy night in February when you called me
18 after your first interview with David, and you called me and
19 told me, and I was totally shocked.

10:18:11 20 **Q.** What would you as a father have done and what do you
21 believe your wife would have done if the two of you were
22 aware of that when David was growing up?

23 **A.** Obviously we would have reported it, but also would
24 have sought and gotten him help. You know, we were in a
10:18:29 25 position, we could have gotten him a lot of help. Both of

Vickers - Direct

1 us were government employees. My brother was on Fairfax
2 County police, he was a lieutenant on the police department
3 at the time. You know, we had the resources to be able to
4 help him and also to help hopefully apprehend somebody.

10:18:51 5 **Q.** Would you have taken efforts to get David counseling
6 that he obviously would have needed?

7 **A.** Absolutely. Absolutely. You know, and that's
8 what -- I just wish I could have been able to see this when
9 he was younger. And I don't know, hindsight, I still don't
10:19:15 10 see some of these things, when it was.

11 He was even being examined quite a bit by
12 psychiatrists and psychologists because of a learning
13 disability all the way through from age 3 up until college,
14 and they never reported anything like that.

10:19:34 15 **Q.** All right. Mr. Vickers, you have two grandchildren?

16 **A.** Correct.

17 **Q.** When is the last time you had any contact with those
18 children?

19 **A.** Sometime in early February. After David was arrested
10:19:47 20 we had a good relationship with Dana, and then it kind of
21 fell apart when we started having -- hiring you as counsel
22 to be able to help.

23 **Q.** So is his wife pretty much excluding you from having
24 contact with the grandchildren because you're supporting
10:20:09 25 your son?

Vickers - Direct

1 **A.** Total. I've sent the children all the Christmas
2 cards, birthday cards, tried to reach out, get no response
3 back whatsoever.

4 **Q.** Because you're supporting your son?

10:20:20 5 **A.** Yes, primarily because, you know, he is my son and
6 I've got to help him, but I want to help my grandchildren,
7 too, and it's --

8 **Q.** All right. Mr. Vickers, how old are you, sir?

9 **A.** I am 70.

10:20:36 10 **Q.** Mr. Vickers, you've been here throughout repetitive
11 sessions of Court, including when your son stood before this
12 Court and withdrew from a plea agreement. Is that correct?

13 **A.** That is correct.

14 **Q.** And you understand at that particular point your son
10:20:59 15 is facing life in prison. You understand that?

16 **A.** Yes, I do.

17 **Q.** Are you requesting that this Honorable Court consider
18 a sentence less than life imprisonment?

19 **A.** Yes, I do, because --

10:21:11 20 MR. GREG McCORMACK: All right. Thank you,
21 sir. I have no further questions.

22 Hold tight, don't get up.

23 THE COURT: Mr. Filiatraut, anything?

24 MR. GREG McCORMACK: Don't get up.

10:21:18 25 MR. FILIATRAUT: Just a couple questions, if I

Vickers - Cross

1 could, Judge.

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION OF EDGAR WAYNE VICKERS

4 BY MR. FILIATRAUT:

10:21:22 5 Q. Good morning, Mr. Vickers.

6 A. Good morning.

7 Q. I'm sorry for this case. All right? And is it your
8 testimony that the first time you learned that your son had
9 been sexually molested when he was a child was during the
10:21:45 10 pendency of this case?

11 A. Yes, in February '15.

12 Q. All right. That must have been a pretty awful thing
13 to hear.

14 A. You could say that, yes, sir.

10:21:55 15 Q. Right. Let me ask you, you testified that if you knew
16 back then you would have wanted the authorities to apprehend
17 the person who did that?

18 A. That is correct.

19 Q. How would you have wanted the criminal justice system
10:22:14 20 to treat that person?

21 A. I would have at least -- how would I want -- the law
22 is the law, sir.

23 Q. Uh-huh?

24 A. You know, there's state and federal laws. And so I
10:22:24 25 would want them to at least be held accountable.

1 Q. Okay.

2 MR. FILIATRAUT: Thank you.

3 THE COURT: Thank you, Mr. Filiatraut.

4 Sir, you can step down. Thank you very much.

10:22:35 5 THE WITNESS: Thank you.

6 MR. GREG McCORMACK: Sir, I have no further
7 evidence to present.

8 THE COURT: Okay, Mr. McCormack. Then in
9 furtherance of mitigation, anything else?

10:22:47 10 MR. GREG McCORMACK: Nothing further in
11 mitigation, sir.

12 THE COURT: Okay. Thank you.

13 Mr. Vickers, I'm going to ask whether you have
14 anything to say before you step down.

10:23:03 15 THE WITNESS: No, sir.

16 THE COURT: Mr. Filiatraut, on behalf of the
17 government, your thoughts.

18 MR. FILIATRAUT: Yes, Judge.

19 THE COURT: Sure. And I have read your
10:23:09 20 sentencing memorandum; I should say Mr. McDonough's.

21 MR. FILIATRAUT: Thank you, Judge.

22 May it please the Court: The government here, Your
23 Honor, is seeking a sentence in the guideline range. And
24 the guidelines as they apply to this defendant, based on the
10:23:36 25 facts proven at trial, the guideline range is life.

1 The reason for that is because this defendant poses
2 the most severe threat to children everywhere. This
3 defendant is the person who parents everywhere should fear.
4 Until now, maybe some, maybe people on this jury who saw
10:24:08 5 this case, heard about these things, heard about apps like
6 Kik, heard about Internet websites like Motherless, maybe
7 they hadn't heard about those things, but they exist, and
8 they exist innocuously.

9 The people who make those websites will never admit
10:24:27 10 that we want depravity to exist on websites, we want
11 depravity to infect the lives of children through the use of
12 these websites and apps, but they do. They do because
13 people are out there like the defendant. He fully intended
14 to have sex with a 13-year-old girl in Ohio when he got in
10:24:53 15 his car and drove through five states. He fully intended to
16 groom a 13-year-old girl when he was talking with her on
17 Kik.

18 Parents don't know who these people are. They don't
19 know what they look like. They don't know when they're
10:25:15 20 coming, but they could be. Kids use these apps, kids who
21 are curious. Kids need to be protected. He fully intended
22 to rape a 13-year-old. Let's keep that in mind.

23 Additionally, the government has no reason to doubt
24 that the defendant has been sexually abused in his life, and
10:25:49 25 that's tragic and horrible. And were it possible, I'm sure

1 the government where he lived would have loved to prosecute
2 that case if they could, but here is the thing: Imagine for
3 a moment if a tragic moment had been video recorded and
4 passed around on the Internet in perpetuity, because that's
10:26:21 5 the other thing this defendant did when he sent child
6 pornography through the Internet to who he thought was a
7 mother and a 13-year-old girl, re-victimizing those children
8 over and over again.

9 Child pornography is cancer. There's no other way to
10:26:44 10 describe it. It's disgusting. It's abhorrent. Its mere
11 existence is offensive and disgusting. People who have it
12 are committing crimes by merely having it. He had it and
13 sent it to a child, a child who he was grooming.
14 Thankfully it wasn't a child, thankfully he had no
10:27:16 15 opportunity to actually take possession of and rape a
16 13-year-old, but only by the grace of God really. In his
17 mind he had every intention of doing that to a real child.

18 And the government seeks a guidelines sentence in this
19 case because what needs to happen here is people everywhere
10:27:45 20 need to see that when this threat, when this thing that
21 could come out from anywhere, from any state, from any
22 crevice, from any shadow, and come after their child, when
23 that person is caught that person is dealt with fairly, and
24 the fair sentence here is a guidelines sentence of life.

10:28:14 25 Thank you, Judge.

1 THE COURT: Thank you, Mr. Filiatraut.

2 All right. Let's take a look at the report. Count 1,
3 distributing a visual depiction or material involving the
4 sexual exploitation of minors, Class C felony. Count 2,
10:28:43 5 coercion and enticement. Count 3, travel with intent to
6 engage in illicit sexual conduct. Count 2 is a class A
7 felony, Count 3 is a class B felony.

8 On January 28, 2015, the defendant was named in a
9 three-count indictment filed in this Court.

10:28:58 10 Mr. Vickers, please go to the podium with
11 Mr. McCormack.

12 On December 3, 2015, defendant was found guilty by
13 jury trial to all three counts of the indictment. As we
14 know, there is no plea agreement in this case.

10:29:11 15 As far as the offense conduct, we'll use the following
16 summary both as the offense conduct and the nature and
17 circumstances of the offense once we get to the 3553(a)
18 factors.

19 In December 2014, an undercover investigator found the
10:29:27 20 defendant on a shared website and noted that the defendant
21 was in several groups who showed an interest in breeding and
22 having sexual relationships with young girls. Eventually
23 the defendant contacted the undercover investigator, who was
24 posing as a 29-year-old mother of a 13-year-old daughter.

10:29:41 25 Defendant expressed an interest in the child. He

1 began communicating with the 13-year-old via Kik, a
2 smartphone application used for instant messaging. He
3 communicated with the undercover investigator/mother about
4 the breeding of the 13-year-old and discussed plans to
10:29:58 5 travel from his home in Virginia to Ohio in order to have
6 sex with the child.

7 Defendant sent pornography videos to the
8 investigator/mother through Kik, which included adult
9 bestiality and child pornography with prepubescent females
10:30:14 10 engaged in sexual acts with older men or other prepubescent
11 females. Some of the videos appeared to have restrained
12 and/or drugged children involved in the pornography. He
13 also sent a video to the 13-year-old which contained a
14 prepubescent female engaged in sex with a male, and he told
10:30:31 15 the child that he hoped the video would be them.

16 He told the child he was going to travel to Ohio to
17 have sex with her, possibly impregnate her, and have a
18 long-term relationship with her. During telephone
19 conversations with the investigator/mother, defendant
10:30:46 20 admitted to having prior sexual relationships with minors.

21 On January 4, 2014, the defendant contacted the
22 investigator/mother and said he may travel to Ohio. The
23 next day he did, in fact, travel to Ohio, arrived at the
24 predetermined meeting location in Ohio, and was immediately
10:31:05 25 arrested.

1 That's a summary of what we have. Of course, we have
2 more detail in the report itself. It is not necessary to go
3 through all of this.

4 MR. GREG McCORMACK: Your Honor, if I may,
10:31:13 5 please.

6 THE COURT: What, Mr. McCormack?

7 MR. GREG McCORMACK: Maybe I misunderstood the
8 Court's procedure. I'm used to arguing after the
9 prosecution argues.

10:31:24 10 THE COURT: I'm not sure what you're used to,
11 but I do it the other way. That's why I asked if there was
12 anything else in mitigation.

13 MR. GREG McCORMACK: I apologize.

14 THE COURT: I'll stop right here and allow you
10:31:33 15 to go. Go ahead.

16 MR. GREG McCORMACK: I truly apologize, Your
17 Honor.

18 THE COURT: That's okay, go ahead.

19 MR. GREG McCORMACK: Yes, sir. And I do
10:31:38 20 apologize, Your Honor.

21 THE COURT: Go ahead, Mr. McCormack.

22 MR. GREG McCORMACK: All right.

23 Your Honor, this is obviously an extraordinarily
24 difficult situation we have on our hands here. Mr. Vickers
10:31:50 25 has been convicted by the jury, and several months ago we

1 came to Court, and the prosecution, the United States
2 Government, was prepared to stand before this Court and
3 accept a sentence that was less than life, to say that that
4 sentence was sufficient but not greater than necessary; yet
10:32:17 5 they stand here now and say that a sentence of life is
6 necessary. And the only difference at this particular point
7 is Mr. Vickers has withdrawn from the guilty plea and has
8 held the government to its burden of proof.

9 The fundamentals of sentencing before the federal
10:32:40 10 court system under 18 U.S.C. 3553(a) is that the sentence
11 must be sufficient but not greater than necessary. So the
12 argument from the government at this particular point is
13 contradictory, because before they felt a sentence of less
14 than life was sufficient but not greater than necessary, and
10:33:05 15 now they stand before this Court and they say that a
16 sentence of life is necessary.

17 Clearly evidence that was presented at court during
18 the course of trial was disturbing. We heard Mr. Vickers on
19 tape after tape after tape and his discussions with the
10:33:26 20 agent. We heard Mr. Vickers on multiple occasions talking
21 to the agent, discussing with the agent and making
22 conversations with the agent, and we heard the agent on
23 multiple occasions basically convincing Mr. Vickers to stay
24 in this conversation, to stay in this act. Mr. Vickers was
10:33:49 25 questioning the agent, and the agent was clearly saying

1 different things to Mr. Vickers to keep him involved in
2 this.

3 I'm not here to dispute the verdict of the jury, the
4 jury rendered its verdict. Mr. Vickers is guilty as he
10:34:01 5 stands before this Court, but clearly Mr. Vickers was
6 questioning the agent about continuing on with this.

7 As Mr. Vickers stands here, he comes before this Court
8 with absolutely no criminal history whatsoever. He comes
9 from a good family. His dad has testified that he has a
10:34:23 10 history with some difficulties growing up, going through
11 school, the learning disabilities; yet he made it through
12 school, he overcame those disabilities, he made it through
13 school, he made it through college.

14 He has a college degree. He was able to maintain
10:34:42 15 employment. He had difficulties professionally, but he was
16 able to maintain employment. He supported his family. And
17 where he went astray we don't know, but what we do know, he
18 had a very difficult situation when his mom passed away in
19 2013. She suffered a very devastating sickness. He was
10:35:06 20 very close to his mom. She suffered a very devastating
21 sickness at that particular point, this disease, and he lost
22 her, and so did his dad and his sister. And it hit him,
23 literally it just devastated him, and obviously we see that
24 he had an absolute downward spiral at that particular point.
10:35:29 25 And what happened we don't have an explanation for, but he

1 just -- he just literally went into a downward spiral.

2 So here we are at this particular point, we have a man
3 with absolutely no criminal history, we have a man from an
4 absolutely good background. We have a man who's overcome
10:35:49 5 obstacle after obstacle in his past background, a man who
6 has been subjected to sexual abuse in his background.

7 So we know we have a man who has the ability to
8 overcome obstacles, and Your Honor, that is rehabilitative
9 potential; a man who can get beyond what he's dealing with
10:36:11 10 here if he has the opportunity to get rehabilitation.

11 That is a man who does not need a life sentence. That
12 is a situation where a life sentence is not necessary. It's
13 greater than necessary, which is the position the United
14 States Government took several months ago, Your Honor. Yet
10:36:37 15 here we are at this particular point, the United States
16 says, no, a life sentence is necessary. So we have a great
17 contradiction in this case. It's a difficult situation.

18 Mr. Vickers came before this Court several months ago,
19 and we stood before this Court, and the Court cautioned him,
10:37:00 20 I cautioned him. "Mr. Vickers, you have a deal that gave
21 you a sentencing range of 262 to 327. What are you doing
22 here?" And he chose to hold the government to its burden of
23 proof. Yet at this particular point, because he chose to
24 hold the government to its burden of proof, which the
10:37:22 25 government met its burden of proof in front of a jury, now

1 he's facing life imprisonment. And I submit to the Court he
2 should not be unnecessarily penalized for doing that at this
3 particular time.

4 I believe we have a sentencing range -- and it's a
10:37:37 5 large sentencing range -- of 262 to 327, that that
6 sentencing range is still an appropriate sentencing range.
7 It gives the ability for a person to be rehabilitated. It
8 gives the ability for a person to say I still have the
9 ability to be rehabilitated, to take advantage of the
10:37:59 10 programs that the Federal Bureau of Prisons can give me, can
11 give me the ability to be a person who can be returned to
12 society.

13 The government recognized that when we were
14 negotiating the pretrial agreement and we came before this
10:38:14 15 Court ready to enter into that, and yes, I held the
16 government to its burden of proof. It gives the ability to
17 his dad and his sister -- his dad and myself will probably
18 be long gone, dead and buried -- my son hopefully and his
19 sister hopefully will be here, and his sister will hopefully
10:38:36 20 be available for him to have somebody to support him when
21 he's done with the term.

22 But somewhere in that range of 262 to 327 would be an
23 appropriate range for this man. As his dad says, as the
24 government asked him, what should happen to a person who
10:38:52 25 commits an offense? He should be held accountable. He's

1 being held accountable at this particular point. He's been
2 convicted. A sentencing of 262 to 327 clearly holds him
3 accountable, clearly puts him in prison for a significant
4 period of time, and we will hold him accountable for a
10:39:09 5 lifetime of supervised release after that, where he's held
6 to the strictest of terms of supervised release; where he is
7 hounded by a probation officer, he is monitored very
8 closely, yet he has a potential to return to society and he
9 has the rehabilitative potential to be a member of our
10:39:33 10 society, and hopefully he can get beyond that.

11 And it's a difficult case, as I believe we all
12 recognize, when he came into this Court and he withdrew from
13 that pretrial agreement, we all sat there in the Court's
14 chambers and we shook our head. What's going on? What is
10:39:53 15 affecting you? Is it the jailhouse lawyers? Is it the
16 people who you're talking to? It's not dad who's talking to
17 you, it's not me who's talking to you. It's the outside
18 influences. Is it your wife? What's going through? Is it
19 your family situation? Your wife? Is it the fact you've
10:40:16 20 lost your kids? Is it the fact these jailhouse lawyers are
21 doing this to you? What's going on here?

22 There's outside influences that have affected this
23 man, Your Honor. I've been practicing 36 years, I've not
24 seen anything like this in my life. But it's a difficult
10:40:34 25 situation, and I ask the Court look at this very clearly,

1 but that the fundamentals of 18 U.S.C. 3553(a), which
2 support and recognizes the second sentencing factor here is
3 the history and characteristics of the defendant, the
4 history and characteristics of the offender is 100 percent
10:40:55 5 favorable to this defendant, 100 percent favorable to this
6 defendant. There is nothing adverse in his background,
7 nothing.

8 And then you get to the basic fundamentals of the
9 sentencing, fundamentals of sentencing is that the sentence
10:41:08 10 has to be sufficient but not greater than necessary. We go
11 back to when we first came into this Court, when I first met
12 Your Honor, was for the purpose of entering a guilty plea
13 with a range of 262 and 327, and the government was prepared
14 to say that was sufficient but not greater than necessary
10:41:26 15 for this defendant with this case. Nothing has changed
16 except he held the government to its burden of proof.

17 THE COURT: Thank you, Mr. McCormack.

18 MR. GREG McCORMACK: Thank you, Your Honor.

19 THE COURT: Mr. Filiatraut, any response?

10:41:37 20 MR. FILIATRAUT: Yes, Judge, if I could.

21 The government offered a plea in this case, and in the
22 plea the government agreed to stay within a recommended
23 guideline sentence. The defendant had an opportunity to
24 take that plea, and the crimes didn't change, that plea had
10:41:59 25 all three counts in the indictment accounted for. He has

1 been found guilty of all three counts of the indictment.
2 The guidelines have changed, the governmental's position has
3 not. The government's position has always been we want a
4 sentence in the guideline range. Had he pled he would have
10:42:17 5 had acceptance of responsibility points, and he would have
6 been able to show this Court he's able to be rehabilitated
7 potentially.

8 The government's position has not changed. Now we
9 want a guidelines sentence. He's been found guilty. He has
10:42:35 10 chosen to exercise his right to a trial. We are not
11 penalizing him for that. We are not asking the Court to
12 penalize him for that. We're asking for a guidelines
13 sentence.

14 Thank you.

10:42:46 15 THE COURT: Thank you, Mr. Filiatraut.

16 MR. GREG McCORMACK: Thank you, Your Honor.
17 And again, I apologize, Your Honor.

18 THE COURT: That's okay, Mr. McCormack.

19 All right. We've gone through the offense conduct.
10:43:00 20 Again, that will also serve as the nature and circumstances
21 of the offense once we get to the 3553(a) factors.

22 Victim impact: No identifiable victims, but we know
23 the background of this case.

24 There's no information indicating the defendant either
10:43:13 25 impeded or obstructed justice. No acceptance of

1 responsibility, obviously, you went to trial.

2 Offense level computation: We use the 2015 edition of
3 the guidelines manual. Count group 1, distributing a visual
4 depiction of material involving the sexual exploitation of
10:43:33 5 minors, base offense level is 22.

6 Specific offense characteristic: Because the material
7 involved a prepubescent minor or a minor who had not
8 attained the age of 12, there is an increase by two.

9 Specific offense characteristic: Since the offense
10:43:49 10 involved distribution to a minor that was intended to
11 persuade, induce, entice, coerce, or facilitate the travel
12 of the minor to engage in prohibited sexual conduct, there
13 is an increase by seven levels.

14 Specific offense characteristic: Since the offense
10:44:05 15 involved material that portrays sadistic or masochistic
16 conduct or other depictions of violence, there's an increase
17 of four.

18 Specific offense characteristic: Since the defendant
19 engaged in a pattern of activity involving the sexual abuse
10:44:18 20 or exploitation of a minor, increase by five.

21 Specific offense characteristic: Since the offense
22 involved the use of a computer or an interactive computer
23 service for the possession, transmission, receipt, or
24 distribution of the material, or for accessing with intent
10:44:34 25 to view the material, there is an increase by two levels.

1 Specific offense characteristic: Since the offense
2 involved at least 600 images, there is an increase of five
3 levels.

4 No victim-related adjustment, no adjustment for role,
10:44:48 5 no adjustment for obstruction. Subtotal is 47.

6 And Counts 2 and 3 are grouped for guideline
7 calculation purposes. For group 2, coercion and enticement,
8 the base offense level is 28.

9 Specific offense characteristic: Since the offense
10:45:03 10 involved the use of a computer or an interactive computer
11 service to, A, persuade, induce, entice, coerce, or
12 facilitate the travel of the minor to engage in prohibited
13 sexual conduct; or B, entice, encourage, offer, or solicit a
14 person to engage in prohibited sexual conduct with a minor,
10:45:22 15 increase by two.

16 No victim-related adjustment, no adjustment for role.
17 No adjustment for obstruction. Subtotal is 30.

18 We do a multiple-count adjustment, and the greater of
19 the adjusted offense level above is 47. No increase in the
10:45:36 20 offense level. Combined adjusted offense level is 47.

21 No Chapter IV enhancements, no acceptance of
22 responsibility. Total offense level is 43, because that's
23 how high the guideline table goes. So we bring it back down
24 to 43 because he's literally off the charts.

10:45:59 25 The offense behavior not a part of relevant conduct,

1 none. Defendant's criminal history: No juvenile
2 adjudications, no adult criminal convictions.

3 Criminal history computation: He scores zero, he's
4 automatically in a Category I.

10:46:12 5 Other criminal conduct: He's got 22 infractions for
6 failure to pay a toll, he's got some traffic matters in
7 paragraph 75. No pending charges, no other arrests.

8 Offender characteristics: Mr. Vickers was born in
9 1973 in Virginia, raised in Virginia by his parents. Mother
10:46:31 10 was an accountant for the government, father was a
11 cartographer for the government.

12 He reported experiencing a positive childhood. No
13 drug use, no alcohol abuse, no physical abuse, no other
14 financial difficulties. Good relationship with his parents
10:46:47 15 and his only sister.

16 As we've heard, his mother died in 2013 from
17 Alzheimer's. His father is retired and lives in Virginia.
18 His sister is here. In 2001 he married, has two children
19 together; appears to be ages 7 and 3, they may be older now.

10:47:10 20 Since his incarceration his wife has filed for
21 divorce, and as we've heard from the defendant's father,
22 she's really cut off contact. His support system, that is
23 defendant's, is limited to his father and sister at this
24 point.

10:47:27 25 Physical condition: Appears to be healthy, no issues.

1 Mental and emotional health: He has no mental health
2 counseling experience. Said while he does not believe he
3 needs mental health services, he is open-minded about
4 participating in treatment.

10:47:44 5 Substance abuse: He reports no illegal drug use, no
6 prescription drug abuse. He notes for the six months
7 immediately before his arrest he was drinking a couple
8 drinks per day, daily, to the point of intoxication once or
9 twice weekly. Appears to be wanting to celebrate his
10:48:09 10 birthday.

11 Educational, vocational, special skills: Graduated
12 from high school in Virginia in 1991. Reports being
13 involved in special ed classes due to a form of dyslexia.
14 Earned his bachelor of science degree in prelaw from George
10:48:26 15 Mason University, Fairfax, Virginia, in '97. Reports no
16 licenses, certifications, or special skills.

17 Employment record: 2010 to his arrest he was employed
18 full time as a medical courier in Virginia, delivering
19 medical supplies, organs, and blood, earned commissions.
10:48:49 20 Worked as a courier for LaserShip. He owned and operated a
21 Quiznos sub shop, was self-employed as a restaurant
22 consultant. He was one of 20 partners in a Dunkin' Donuts
23 franchise, worked full time as a franchise support
24 specialist for Quiznos.

10:49:04 25 Financial condition: At this time he has no assets,

1 appears to have no ability to pay a fine or any other costs
2 associated with this case.

3 Sentencing options: Under the statute, for Count 1
4 the minimum term is five years, the maximum is 20; Count 2,
10:49:20 5 minimum term of imprisonment is 10 years, maximum is life;
6 Count 3, the maximum term is 30 years.

7 Under the guidelines, based upon a total offense level
8 of 43 and a Category I, his guideline range is life.

9 There is no plea agreement, as we know.

10:49:39 10 Supervised release: Under the statute, for Count 1,
11 five years to life; Count 2, five years to life; and Count
12 3, five years to life. They all run concurrently.

13 Under the guidelines, the same thing for Counts 1, 2,
14 and 3.

10:49:57 15 Probation: Under the statute and the guidelines, he's
16 ineligible for probation. It's barred by law.

17 Mandatory drug testing will apply unless the Court
18 finds based upon reliable sentencing information that
19 Mr. Vickers would indicate a low risk of future substance
10:50:13 20 abuse.

21 Fines: Under the statute, for each one of these
22 counts it's \$250,000. A special assessment of \$100 for each
23 one of these three counts. The fine range is \$25,000 to
24 \$250,000.

10:50:31 25 Paragraph 109 gives us the factors the Court must

1 consider in determining the amount of any fine to impose and
2 the costs. I'll find those to be irrelevant, he has no
3 ability to pay. Restitution does not apply in this case,
4 either under the statute or under the guidelines.

10:50:46 5 Turning to factors that may warrant a departure, Miss
6 Wessel has not identified any factors that would warrant a
7 departure outside the range.

8 Factors that may warrant a sentence outside of the
9 system: We start with the Court's job, which is to impose a
10:50:59 10 sentence sufficient but not greater than necessary to comply
11 with the 3553(a) factors. In making this determination, we
12 look at the nature and circumstances of the offense, history
13 and characteristics of the defendant, the need for the
14 sentence imposed, and kinds of sentences available.

10:51:20 15 Okay. There appear to be no unresolved objections by
16 either the government or the defense, so let's move on to
17 the 3553(a) factors. The Court has already gone over the
18 nature and circumstances of the offense when I dealt with
19 the offense conduct, there is no need to repeat for that
10:51:36 20 category.

21 History and characteristics of the defendant: We've
22 covered much if not all of this. We take a look at any
23 prior record, violence, physical abuse, diminished capacity,
24 employment, age, substance abuse, and family ties.

10:51:51 25 Let's briefly summarize for Mr. Vickers: No prior

1 criminal record. No history of violence. He did admit to
2 the undercover investigator he had prior sexual
3 relationships with minors.

4 He reports no history of physical abuse. No history
10:52:07 5 of mental health services. No reason to believe he suffers
6 from any diminished capacity.

7 He believes since his incarceration he's been
8 prescribed an antidepressant. That's not unusual. Reports
9 earning a bachelor's degree in prelaw and maintaining
10:52:24 10 regular employment. We've gone over that already.

11 Is currently 42. At the time of the offense he was
12 married, raising two minor children. However, as we know,
13 his wife has since filed for divorce and cut off the rest of
14 the family. Support system now limited to his father and
10:52:42 15 sister.

16 He reports no illegal drug use. He did have some
17 excessive alcohol use for a period of time.

18 All right. Need for sentence imposed, I'll come back
19 to that when I actually sentence Mr. Vickers.

10:53:05 20 Sentencings disparities: We look at defendants with
21 similar records and conduct. There are no codefendants in
22 this case, and the guideline range that Mr. Vickers faces
23 would be the same for those under similar circumstances,
24 offense levels, personal characteristics, criminal
10:53:25 25 histories, et cetera. And considering the facts of this

1 case, restitution does not apply here.

2 We'll come back to the final category, which is need
3 for sentence imposed. And we look at just punishment,
4 afford adequate deterrence, protect the public, reflect the
10:53:42 5 seriousness of the offense, and improve offender conduct and
6 condition.

7 Mr. Vickers, we take a look at all these factors,
8 every single one of them. They're all important. We hope
9 collectively no matter what that you do improve yourself, no
10:53:59 10 matter what sentence I give you. It's important. So are
11 the other factors. And a lot of these are not equally
12 weighed in every single case. The Court must take all of
13 them into consideration, but they could have uneven weight
14 depending on the facts and circumstances and the law that
10:54:19 15 applies to each case. So that's what we have to consider.

16 So what is just punishment? What is adequate
17 deterrence? How do we protect the public? This is a
18 serious offense, we know that, and I've discussed improving
19 offender conduct and condition.

10:54:42 20 Both Mr. McCormacks have done a nice job of presenting
21 me with mitigating evidence; the government, the same way,
22 for aggravating circumstances. And that's where the balance
23 comes in, how do they weigh against each other.

24 Let me first address Mr. McCormack's comment about the
10:55:09 25 range that the government felt was appropriate for the plea

1 deal but now is asking for a guideline range of life.

2 That was the negotiation part, Mr. Vickers, and you
3 know that. That was the negotiation. You received very
4 competent and good advice from both Mr. McCormacks, I'm sure
10:55:33 5 from your family.

6 I asked you more than one time whether you really
7 wanted to go forward with this. You were absolutely
8 convinced that this was the right thing to do for you. So
9 as you know, you cannot now get the benefit of what the
10:55:54 10 government was offering before trial because you used the
11 government resources.

12 We brought jurors in here. They had to go through
13 everything, listen to everything that was put forth in this
14 trial, consider all of the evidence, and that evidence
10:56:14 15 including them having to watch child pornography and
16 bestiality videos. They had to watch a horse and a dog with
17 humans, females. I was disgusted. You can imagine how that
18 jury felt.

19 But you absolutely had the right to go to trial, no
10:56:37 20 question about it. It is guaranteed under the law. That
21 doesn't mean you get the benefit of what the government was
22 offering you before they had to use their resources, put
23 their evidence on, and for us to pull the jury in here. It
24 doesn't work that way.

10:57:12 25 Let me also address another comment Mr. McCormack made

1 about no criminal history. That's true, you have none.
2 Most of the people that we have here charged with child
3 pornography have no criminal history, none. Very small
4 percentage have any history, some not even traffic tickets,
10:57:32 5 and they come in here and facing lengthy sentences for their
6 first time around.

7 It's not unusual, because it's a crime that you can
8 sit in your room and commit with the door closed, nobody
9 watching. You don't have to venture out of the house. And
10:57:51 10 I've said before that one of the worst things about the
11 Internet is that you can commit 25 federal crimes by sitting
12 in the comfort of your home, in front of that computer,
13 until you get that knock on the door. Time to answer for
14 what you've done.

10:58:07 15 Same thing here. We did the calculation for your
16 offense level, it came to 47. That's four levels above
17 where the chart stops. We had to come back down to 43 for
18 the maximum.

19 The child pornography is a cancer, I would agree.
10:58:50 20 Every time those videos are played those children are
21 reminded of the hell that they went through, and they have
22 to live with it. But as we know, you took it a step
23 further. You actually traveled to our state for the purpose
24 of engaging in sexual intercourse with a 13-year-old, whom
10:59:16 25 you thought was a 13-year-old. That makes you dangerous,

1 because when people act on their fantasies, that's what
2 makes them dangerous.

3 I remember during the trial and watching some of these
4 communications going back and forth how you said how natural
10:59:51 5 this felt to you. How natural? Natural? Not according to
6 the law and our morals of society. It is so unnatural, and
7 quite frankly disgusting; but if you feel it's so natural
8 that's what really makes you dangerous, because there's no
9 hesitation there, there's no block. There's no barrier that
11:00:26 10 stopped you or would stop you from impregnating a
11 13-year-old. And by your own admission, you had a sexual
12 relationship with, as you said, maybe a 10-year-old at the
13 time, and apparently you thought that was natural, too.
14 It's not, it's abhorrent.

11:00:47 15 And you are according to these calculations every
16 parent's worst nightmare, because you're willing to act on
17 it and rape a minor. I use the word "rape" because at a
18 certain age it becomes that, and if you'd done that with a
19 10-year-old, that's rape.

11:01:15 20 Sometimes you just can't save somebody from
21 themselves, and everybody around you, including your good
22 counsel, tried to do that. So there is some wiring that
23 appears to be off, because you just think that this is
24 natural conduct, and maybe everybody should be doing it, and
11:01:38 25 society should be this way.

1 But Congress has heard these horror stories across the
2 country about the victimization of children, not just
3 through child pornography, but through people like you who
4 are willing to cross state lines and engage in illicit
11:02:04 5 sexual conduct with minors. Families crying, what happened
6 to my child; some of them stolen for these purposes, never
7 to be seen again except on the Internet.

8 Babies being raped is child pornography. Bestiality,
9 what part of that is human? Really, what part of that is
11:02:37 10 human? And who gets sexual satisfaction from the rape of a
11 baby, let alone having sex with a horse or a dog? Yet this
12 jury had to watch that. They may need some mental help or
13 health treatment after that trial. I wouldn't doubt it.

14 So really we've discovered that there's evidence of a
11:03:18 15 predatory nature, seeking out a lone child in a park,
16 purposely treating a child as a lover rather than as a
17 child. And there is evidence of deceit. At the time of
18 your arrest the Kik app was deleted from your phone. No
19 videos were found on your phone.

11:04:02 20 No one should be sexually abused, including you -- no
21 one -- but it's a factor, but not a major one, and I'll tell
22 you why: Because most of the abuse occurs with females in
23 this country, and we don't see female child pornographers or
24 females willing to cross state lines to have sex with
11:04:35 25 minors, but yet females are more sexually abused in this

1 country than males. So the argument that you were sexually
2 abused and therefore this may have given you a tendency to
3 do what you did rings pretty hollow, the evidence is just
4 not there.

11:05:12 5 So this case becomes more of the aggravating factors
6 substantially outweighing the mitigating, substantially,
7 because you have a good family, good parents, good sister,
8 good father. We heard him testify. No physical abuse, no
9 drugs or alcohol, no financial difficulties. All the
11:05:39 10 factors that we see that put somebody in the hole in the
11 beginning were not there in your life.

12 Yes, it's devastating that you lost your mother to
13 Alzheimer's, no family should have to go through that, but
14 how that translates into crossing a state line to have sex
11:06:00 15 with a 13-year-old, the connection is just not there.

16 You're educated, more so than most people who come
17 into this courtroom, with a college degree, good employment
18 history. All the things that point to you should have known
19 better, especially with the good advice of counsel. But
11:06:31 20 there's no way in the world you should have gone through
21 with this trial, let alone did what you did; but again, it's
22 your choice and your absolute constitutional legal right to
23 do so. And you turned down an offer made by the government
24 and rolled the dice.

11:07:02 25 So I find you to be a high risk to the children.

1 Deterrence is a major factor. We have to protect society,
2 part of which, of course, are the children, because if this
3 weren't an investigator and this were actually a 29-year-old
4 mother who was willing to give her 13-year-old daughter up
11:07:27 5 for sex to a stranger in another state, that would have been
6 another problem, because there's no doubt in my mind that
7 you would have followed through.

8 All right, Mr. Vickers, let's go ahead and sentence
9 you. All right. Mr. Vickers, you are committed to the
11:08:39 10 custody of the Bureau of Prisons as follows: For Count 1,
11 240 months; Count 2, life; Count 3, 360 months, all
12 concurrent.

13 Supervised release: Life, if it so applies, on each
14 count, to run concurrently. If for some reason you are
11:09:33 15 released, because we can't predict what's going to happen
16 years and years from now, you will report to the U.S.
17 Probation Office in the sentencing district or the district
18 to which you are released.

19 I'll waive the fine. \$300 special assessment to the
11:09:51 20 United States. Restitution is not in issue.

21 If you are on supervision, you'll not commit another
22 federal, state, or local crime. You'll not illegally
23 possess a controlled substance. You'll comply with the
24 standard conditions that have been adopted by this Court,
11:10:07 25 and with the following additional conditions: I'll suspend

1 the mandatory drug testing, it's not drug related. He has
2 no history.

3 The defendant will abide by all rules of the minor
4 protection and restriction program of the U.S. Probation
11:10:23 5 Office. And again, this is supervised release conditions if
6 he gets that far.

7 He'll submit to a mental health evaluation and sex
8 offender assessment as directed by Probation. The defendant
9 shall participate in any treatment program, including for
11:10:36 10 sexual deviancy, which may include polygraph testing if
11 recommended by these evaluations.

12 Defendant shall submit to periodic polygraph testing
13 as directed by Probation. No violation proceedings will be
14 based solely on the results of the polygraph exam or a valid
11:10:51 15 Fifth Amendment refusal to answer a polygraph question.

16 The defendant will not own or possess any type of
17 camera, photographic device, and other equipment, including
18 video recording equipment, without the written approval of
19 the probation officer.

11:11:05 20 You will not possess a firearm, destructive device, or
21 any dangerous weapon. And you'll cooperate in the
22 collection of DNA as directed by Probation.

23 Under 18 U.S.C. § 3583, defendant is required to
24 register under the Sex Offender Registration and
11:11:21 25 Notification Act and must comply with the requirements of

1 that act as directed by Probation.

2 Pursuant to the Adam Walsh Child Protection Act of
3 2006, defendant will keep the registration current in each
4 jurisdiction in which he resides, is employed, or is a
11:11:36 5 student. Defendant shall no later than three business days
6 after each change of name, residence, employment, or student
7 status, appear in person in at least one jurisdiction in
8 which he is registered and inform that jurisdiction of all
9 changes in reporting information. Failure to do so may be a
11:11:50 10 violation of his conditions of supervised release and may be
11 a new federal offense punishable by up to ten years.

12 Defendant is prohibited from accessing any online
13 computer service at any location, including employment or
14 education, without the prior written approval of the
11:12:05 15 probation officer or the Court. This includes any Internet
16 service provider, bulletin board system, or any other public
17 or private computer network. Any approval shall be subject
18 to conditions approved by the probation officer or the Court
19 with respect to that approval.

11:12:22 20 Defendant shall consent to the U.S. Probation Office
21 conducting periodic unannounced examinations of his computer
22 systems, which may include retrieval and copying of all
23 memory from hardware, software, and/or removal of such
24 systems for the purpose of conducting a more thorough
11:12:37 25 inspection, and will consent to having installed on his

1 computer at his expense any hardware or software to monitor
2 his computer use or prevent access to particular materials.

3 Defendant consents to periodic inspection of any such
4 installed hardware or software to insure it is functioning
11:12:54 5 properly. And defendant shall provide the U.S. Probation
6 Office with accurate information about his entire computer
7 system, that is hardware and software, all passwords used by
8 him, and his Internet service providers, and will abide by
9 all rules of the computer restriction and monitoring
11:13:10 10 program.

11 And he'll submit his person, residence, place of
12 business, computer, or vehicle to a warrantless search
13 conducted and controlled by the U.S. Probation Office at a
14 reasonable time, in a reasonable manner, and based upon
11:13:21 15 reasonable suspicion of contraband or evidence of a
16 violation of a condition of release. Failure to submit to a
17 search may be grounds for revocation.

18 Defendant shall inform any other residents that the
19 premises and his computer may be subject to a search under
11:13:34 20 this condition.

21 That's all I have. Mr. McCormack, I will assume that
22 Mr. Vickers objects to the sentence; therefore, I will note
23 that for the record --

24 MR. GREG McCORMACK: Yes, sir.

11:13:47 25 THE COURT: -- and read him his appellate

1 rights.

2 Mr. Vickers, if you wish to appeal the conviction or
3 sentence in this case you must do so within 14 days after
4 entry of the Court's judgment. You have the right to have
11:13:58 5 papers properly prepared and filed on your behalf and the
6 right to counsel on appeal, and if you cannot afford counsel
7 I'll appoint counsel to represent you at no cost to you.

8 Do you understand those rights?

9 THE DEFENDANT: Yes, sir.

11:14:08 10 THE COURT: And Mr. McCormack, please protect
11 his appellate rights pending any decision he makes in that
12 regard.

13 MR. GREG McCORMACK: Yes, Your Honor.

14 Mr. Vickers has advised me that he does intend to appeal,
11:14:16 15 and he in fact will be requesting a court-appointed counsel.

16 THE COURT: Fine. I'll go through the list,
17 and I'll have somebody ready for him.

18 MR GREG McCORMACK: Yes, sir.

19 THE COURT: Mr. Filiatraut, anything further
11:14:26 20 on behalf of the government?

21 MR. FILIATRAUT: No, Judge. Thank you.

22 THE COURT: Miss Wessel, anything further?

23 PROBATION OFFICER: No, Your Honor.

24 THE COURT: The defendant is remanded, and we
11:14:32 25 are adjourned.

DEPUTY CLERK: All rise. This Court is in
recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s/Heidi Blueskye Geizer June 1, 2016

Heidi Blueskye Geizer, RMR-CRR Date